BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2021

CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.908 of 2017
and
C.M.P(MD)No.9649 of 2017
AND
Cros.Objection(MD)No.10 of 2021

1.C.M.A(MD)No.908 of 2017:-

The United India Insurance Company Limited,
Branch Office at No.1, Promenade Road,
Trichy District - 620 001. ... Appellant/4th Respondent

Vs.

1.M.Sri Vidhya @ Vidhya Devi ... 1st Respondent/Claimant

2.S.N.Rajkumar

3.M/s.New India Assurance Company Limited,
Having Branch Office at No.375,
Annasalai 2nd Floor, Saidapet,
Chennai.

4.S.Rajasekar ... Respondents 2 to 4/
Respondents 1 to 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 26.05.2017 made in M.C.O.P.No.243 of 2014, on the file of the Motor Accident Claims Tribunal (Special Court for EC and NDPS Act Cases), Pudukkottai.

For Appellant : Mr.G.Prabhu Rajadurai

For R - 1 : Mr.K.Govindarajan
for Mr.C.Susikumar

For R - 3 : Mr.R.Srinivasan

2.Cross Objection (MD)No.10 of 2021:-

M.Sri Vidhya @ Vidhya Devi ... Cross Objector/
1st Respondent

Vs.

The United India Insurance Company Limited,
Branch Office at No.1, Promenade Road,
Trichy District - 620 001. ... 1st Respondent/Appellant

2.S.N.Rajkumar

3.M/s.New India Assurance Company Limited,
Having Branch Office at No.375,
Annasalai 2nd Floor, Saidapet,
Chennai.

4.S.Rajasekar ... Respondents 2 to 4/
Respondents 2 to 4

PRAYER: Cross Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure, against the judgment and decree, dated 26.05.2017, made in M.C.O.P.No.243 of 2014, on the file of the Motor Accident Claims Tribunal (Special Court for EC and NDPS Act Cases), Pudukkottai.

For Appellant : Mr.K.Govindarajan
for Mr.C.Susikumar

For R - 1 :Mr.G.Prabhu Rajadurai

COMMON JUDGMENT
(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA,J.)

C.M.A(MD)No.908 of 2017 has been filed by the appellant/United India Insurance Company Limited with regard to the quantum and Cros.Obj(MD)No.10 of 2021 has been filed by the first respondent/claimant seeking enhancement of compensation against the award, dated 26.05.2017, passed in M.C.O.P.No.243 of 2014, on the file of the Motor Accident Claims Tribunal (Special Court for EC and NDPS Act Cases), Pudukkottai.

2.As both the appeal and cross objection arise out of a common cause of action, they are taken up for disposal by a common judgment.

3.For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

4.The brief facts relevant for the consideration of the above case are that on 24.02.2013, while the claimant and her family members were proceeding in a Xylo Car bearing Registration No.TN-55-AC-0345 towards Madras in NH 45 road near Mathuranthagam, owned by the third respondent, which was insured with the fourth respondent/United India Insurance Company, the driver of a milk tanker lorry bearing Registration No.TN-19Y-6213, owned by the first respondent insured with the second respondent/New India Assurance Company, rashly and negligently without following the traffic rules and giving proper traffic signal, suddenly swerved the said lorry towards the left track and applied the brake. By then, the Xylo Car which was proceeding in the left track had to violently dash against the said Tanker lorry. As a result of the accident, the claimant had suffered D5 and D6 compression fracture with total spinal cord injury and total paraplegia, left tentorial sah, right traumatic pleural effusion, right trochanteric fracture femur, right leg crush injuries bed-ridden (vegetative state) and the said accident had immobilized her. The injuries caused on her body in the said accident had deprived of the power of organs below her hip and as a result, she could not move as before and to protect her. She requires an attendant permanently. Due to the accident, she was also deprived of her job and she could not sit without any discomfort. Thus, she had suffered total permanent disability. Hence, for the injuries sustained by her, the claimant has filed the claim petition claiming a compensation of Rs.8,00,00,000/-.

5.The fourth respondent/United India Assurance Company resisted the claim petition before the Tribunal stating that the income of the claimant is exaggerated, speculative and not even supported by any documentary evidence. Since the quantum claimed by the claimant is very high, the Insurance Company sought for dismissal of the claim petition.

6.Before the Tribunal, batch of claim petitions were tried together, on behalf of the claimant, P.W.1 to P.W.8 were examined and Exs.P1 to P100 were marked. On the side of the respondents, R.W.1 to R.W.7 were examined and Exs.R.1 to R.8 were marked and also Ex.X1 and Ex.X2 were also marked.

7.The Tribunal, on evaluation of pleadings and evidence, found that equally the driver of the second respondent's Milk Tanker Lorry and the driver of the Xylo car belonged to the third respondent are responsible for the accident and fixed the negligence on the driver of the first respondent and the claimant at 50:50. Hence, the first respondent, being the owner of the milk Tanker Lorry bearing Registration No.TN-19-Y-6213 and the third respondent being the owner of the Xylo Car bearing Registration No.TN-55-AC-0345 are equally liable to pay the compensation. Further, the Tribunal had held that the second respondent/New India Assurance Company and the fourth respondent/United India Insurance Company are liable to pay the compensation to the extent of 50% each and awarded a sum of Rs.2,00,04,000/- (Rupees Two Crores and Four Thousand Only) as compensation with interest at the rate of 7.5% per annum and also directed the second respondent/New India Assurance Company and the fourth respondent/United India Insurance Company to deposit the amount to the extent of 50% each within one month.

8.Challenging the quantum of compensation, which is on the higher side, the fourth respondent/United India Insurance Company as appellant is before this Court by way of C.M.A(MD)No.908 of 2017 and seeking enhancement of compensation, the claimant has approached this Court by way of Cros.Obj(MD)No.10 of 2021.

9.Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant/United India Insurance Company would contend that the Tribunal had awarded an exorbitant sum of Rs.2,00,04,000/- in 90% disability; the Tribunal failed to consider that the claimant herself has claimed her monthly income as 3,000/- Singapore dollars p.m.; the Tribunal failed to take into consideration the uncertainty of job and the lesser protection against job security that exists in Singapore while estimating the income of the claimant and the Tribunal failed to consider the high rate of taxation and the liability against such charges exists in Singapore and a substantial part of income would go to meet the tax liabilities. On these grounds, he would seek reduction of compensation awarded by the Tribunal.

10.The learned counsel appearing for the appellant/United India Insurance Company would rely on the following Judgments:-

(i) In the decision rendered in *United India Insurance Company Limited and others Vs. Patricia Jean Mahajan and others* reported in 2002 (2) SCC 281, with regard to Multiplier, the the Hon'ble Apex Court held as follows:-

> "16.*In the present case we find that the parents of the deceased were 69/ 73 years. Two daughters were aged 17 and 19 years. Main question, which strikes to us in this case is that in the given circumstances the amount of multiplicant also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 226297 Dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs. 47 comes to Rs. 10.38 crores and with multiplier of 13 at the conversion rate of Rs. 30 the amount came to Rs. 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the*

amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants namely, parents aged 69/73 years live in India, but four of them are in the United States. Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in case it is a high amount, a lower mulitplier can appropriately be applied. We find force in this submission. Considering all the facts and factors as indicated above, to us it appears that application of multiplier of 7 is definitely on the lower side. Some deviation in the figure of multiplier would not mean that there may be a wide difference between the multiplier applied and the scheduled multiplier which in this case is 13. The difference between 7 and 13 is too wide. As observed earlier, looking to the high amount of multiplicand and the ages of the dependants and the fact that parents are residing in India in our view application of multiplier of 10 would be reasonable and would provide a fair compensation i.e. purchase factor of 10 years, We accordingly hold that multiplier of 10 as applied by the learned Single Judge should be restored instead of multiplier of 13 as applied by the Division Bench, We find no force in the submission made on behalf of the claimants that in no circumstances the amount of multiplicand would be a relevant consideration for application of appropriate multiplier. We have already given our reasons in the discussion held above."

(ii) In the decision rendered in Branch Manager Vs. N.Antony Sami and others reported in 2017 (2) TN MAC 369 (DB), the Division Bench of this Court held as follows:-

"13.The case of the claimants is that at the time of accident, the deceased was 23 years old and he was a bachelor and he was working as AB in Vessel Crew department in Standford Marine, L.L.C., Dubai and was earning Rs.40,000/- per month and due to the said accident, the deceased died and since the deceased had extended his full support to his family, the family of the

deceased lost their income.

....

15.In order to prove the accident, P.W.2, eye witness was examined and to prove the income of the deceased, one Mallika, who is the mother of the deceased was examined as P.W.1. Ex.P6 is the advocate notice dated 14.12.2011, sent to the Manager, Standford Marine L.L.C., Dubai, who in turn sent Ex.P7 Pay certificate, which shows that the deceased was earning Rs.33,320/- per month. Except this, no other document has been produced by the deceased for proving the income. The other documents viz., Ex.P.11 and 12 are the passport of the deceased and Ex.P.13 is the bank passbook of the deceased and Ex.P.14 is the copy of bank passbook of the mother of the deceased and Ex.P.15 is the SSLC mark sheet of the deceased and Ex.P.16 to 25 would go to show that he was having qualification to work in Marine i.e. shipping company. Perusal of the records would show that no terms and conditions of appointment order has been furnished to show that how long, he was working in the ship and as to whether his employment was permanent in nature. The period of employment has also not been proved and the particulars as to when he returned to India and when he had to join the job again has not been furnished. The only available documents to prove the income of the deceased are Ex.P7 and 8. The same have not been proved as the manner known to law. Therefore, we cannot fix the monthly income as per Ex.P7 and 8. In this regard, it is worthwhile to refer to the decision of Division Bench of Kerala High Court, in the case of, Vahisa and others Vs. C.I Lincy and others, reported in 2017 ACJ P.669. The relevant portion of the judgment is extracted below:-

> *"9.In the decision of Valsamma v. Binu Jose, 2014 ACJ 997 (Kerala), this court has held that income of a person in a foreign country which is not a permanent employment cannot be taken into consideration for the purpose of assessing compensation under the head of loss of dependency and the income will have to be assessed in the context of Indian standards which such person if he is employed in India will be getting. Considering the circumstances, the amount of Rs. 6,000/- fixed by the Tribunal as his monthly income can not be said low and it is reasonable as well."*

16. Under the above said circumstances, in this case on hand, considering the educational qualification of the deceased, definitely, he would get some employment in the shipping company and hence, considering the age, nature of the qualification of the deceased, had he worked in India, definitely, he could get Rs.15,000/- per month. Therefore, this Court fixes the notional income at Rs.15,000/- per month."

(iii) In the decision rendered in *United India Insurance Company Limited and another Vs. Balaji and others* reported in 2017 (2) TN MAC 512 (DB), the Division Bench of this Court held as follows:-

"14.In order to prove the employment and income of the deceased on the side of the claimant, P.W.2, the Marketing Manager of Noor-al-ilm Stationery Company in UAE, where the deceased stated to be worked, was examined. He had deposed that, he was working in the above said company for eight years and he knew Sathya Balaji who joined in his company in the year 1994 temporarily as Accounts and Finance in charge and made permanent in May 1995, as Finance Manager and she was earning 4500 Dhirhams. However, he has not produced any acquittance register or any other registers maintained by the employer to prove the salary of the deceased and through him Exs.A. 29 to 35 were marked. The Tribunal has fixed the monthly income of the deceased at 4500 Dhihrams i.e. INR.54,000/- per month and the age of the deceased at the time of accident was fixed as 30 and 17 multiplier was adopted and accordingly calculated and awarded a sum of Rs. 68,04,000/-.

15.On perusal of the materials placed on record shows that as Ex.A.6, the deceased is stated to have worked as Lecturer in Cauvery College, Trichy from 13.07.1990 to 31.08.1994. Ex.A.15 stated to be the payment vouchers, shows that the deceased singed on the same on 02.12.1995, 02.11.1995, 02.10.1995, 02.09.1995,02.08.1995, 02.07.1995 and 03.06.1995. Ex.A.30 Appointment order shows that date of her joining is 01 May 1995. As per Ex.A.14, Passport, her son B. Shalukya was born on 18.06.1995. It is to be noted that, she got married on 04.03.1994 and till 31.08.1994 was working as Lecturer in Cauvery College in Trichy and she gave birth to a child on 18.06.1995. Assuming that she has joined duty on 01.05.1995 in UAE, at that time she was in the advanced stage of pregnancy. That too when her husband was working as Sales Manager in Dubai and earning 8,500 Dhirhams per month in INR.80,000/-. Even *perusal of the payment vouchers dated 03.06.1995, just 15 days before her delivery and on 02.07.1995 i.e within 15 days of giving birth to her child would show, that she has drawn the salary by putting her signature in the payment vouchers. It is an admitted fact that the deceased gave birth to a child in Tamil Nadu only, therefore, it is hardly possible for a woman after giving birth to a child, travelling within 15 days to abroad and receiving payment by putting the signature in the payment voucher that too first month of her appointment. Further, admittedly she had gone only on dependant visa not on worker's visa. When her husband is earning Rs.80,000/- and wife is in the family way that too at the advanced stage of pregnancy, the appointment order shows her date of joining duty on 01.05.1995, is not believable and hence, this Court is of the view that it would not be possible for the deceased for having been worked during that period as claimed by the claimants.*

16.Therefore, it can not be accepted that she was working as an Accounts Manger and was earning 4500 dhihrams. For the above said reasons, the Exs.A.29 to 35 can not be accepted as it is and income of the deceased can not be fixed relying upon the above exhibits. However, it is worthwhile to refer, the decision of Division Bench of Kerala High Court, in the case of, Vahisa and others Vs. C.I Lincy and others, reported in 2017 ACJ P.669. The relevant portion of the judgment is extracted below:-

> *"9.In the decision of Valsamma v. Binu Jose, 2014 ACJ 997 (Kerala), this court has held that income of a person in a foreign country which is not a permanent employment cannot be taken into consideration for the purpose of assessing compensation under the head of loss of dependency and the income will have to be assessed in the context of Indian standards which such person if he is employed in India will be getting. Considering the circumstances, the amount of Rs. 6,000/- fixed by the Tribunal as his monthly income can not be said low and it is reasonable as well."*

In view of the above decision, in the case on hand, considering her educational qualifications, her appointment as Lecturer in a college, Trichy and non production of salary certificate from the college, Rs.15,000/- per month is fixed as notional income for the *purpose calculating the loss of income and since, on the date of accident the deceased was 29 years old, multiplier 17 would be adopted. Therefore the loss of income would be Rs.15,000 X 17X12 =30,60,000/-"*

11.Mr.K.Govindarajan, learned counsel appearing for the claimant would contend that the Tribunal had erred in awarding a meagre sum of Rs.2,00,04,000/-, particularly, when the claimant had suffered with Paraplegia; though the Doctor-P.W.5, who had examined the claimant opined that the total percentage of the disability is 100%, the Tribunal had erroneously arrived at the disability as 90%; the Tribunal erred in adopting a lesser multiplier of '12', when the age of claimant is 33; the Tribunal ought to have awarded more under the head of 'attendant charges', as the claimant is not able to do even her essential works without the help of others; the Tribunal erred in awarding a meagre sum of Rs.1,00,000/- towards pain and sufferings, when the claimant is still suffering with her ailments, who is bedridden and taking treatment continuously and Tribunal ought to have awarded more under the head of 'inconvenience', as the claimant is completely dependent upon others for all her day-to-day activities.

12.We have given careful consideration to the submissions made by the learned counsel on either side and perused the material documents available on record.

13.On a perusal of the materials available on record, it is seen that the claimant had got appointment in Lian Heng Haut Air-Con Service PTE Limited in Singapore in the year 2007 and she continued to work in the said company till the date of the accident in the year 2013. As per Ex.P.17, the claimant was appointed to the post of Quality Surveyor cum Admin Assistant with effect from 16.04.2007 and the salary of the claimant was 1,200 dollars per month. As per Ex.P77, the last drawn salary by the claimant for the year 2013 is 3000 Singapore Dollars with company's contribution of 16% added to CPF every month and out of the said salary, she paid tax to the tune of 88 Singapore Dollars by filing Income Tax returns in Form IRBA vide Ex.P.73. Besides salary, the claimant would be entitled to Singapore Dollar 480/- against the contribution of the employer for the provident fund vide Ex.P.75 to Ex.P.77. One Singapore Dollar is equivalent to Rs.50/- in India at the time of the accident ie., 2009. The Tribunal had correctly fixed the monthly income of the claimant as 3480 Singapore Dollars which is equivalent to Rs.1,71,112/- (3480 X Rs.49.17) and restricted her monthly income into Rs.1,70,000/- and the loss of future earnings arrived at Rs.1,83,60,000/- (Rs.1,70,000 X 12 X 90% X 10) , which needs interference. Further, it is seen that the Tribunal had not awarded any amount towards future prospects, we are inclined to award 40% towards future prospects, which is arrived at Rs.68,000/-.

Accordingly a sum of Rs.2,38,000/- (Rs.1,70,000 + 68,000) is fixed as monthly income of the deceased. As per the decision relied on by the learned counsel for the appellant/United India Insurance Company in *United India Insurance Company Limited and others Vs. Patricia Jean Mahajan and others* reported in 2002 (2) SCC 281, the Tribunal had correctly fixed the multiplier '10' and the annual income of the claimant would be arrived at Rs.2,85,60,000/- (Rs.2,38,000 X 12 X 10).

14.The facts of the above mentioned Judgments relied on by the learned counsel for the appellant *in* Branch Manager Vs. N.Antony Sami and others *reported in* 2017 (2) TN MAC 369 (DB)*,* and *United India Insurance Company Limited and another Vs. Balaji and others* reported in 2017 (2) TN MAC 512 (DB), may not be applicable to the case on hand. Therefore, we do not refer to the above mentioned case.

15.Though the Tribunal had awarded a sum of Rs.1,00,000/- towards pain and sufferings; a sum of Rs.50,000/- towards inconvenience and a sum of Rs.50,000/- towards loss of married life; a sum of Rs.1,20,000/- toward attendant charges, which are on the lower side, a sum of Rs.2,00,000/- towards pain and sufferings, a sum of Rs.2,00,000/- towards inconvenience and loss of married life and a sum of Rs.2,00,000/- towards attendant charges respectively are awarded.

16.With regard to the other heads viz., medical expenses, extra nourishment and transportation, the Tribunal had awarded a sum of Rs.13,04,000/-, Rs.10,000/- and Rs.10,000/- respectively, which need no interference.

17.Since the Tribunal had not awarded any sum under the head of future medical expenses, this Court awards a sum of Rs.5,00,000/- to the claimant, under the said head.

18.Accordingly, the Award of the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of future earnings	1,83,60,000/-	2,85,60,000/-	enhanced
2.	Pain and sufferings	1,00,000/-	2,00,000/-	enhanced

3.	Inconvenience & Loss of married life	1,00,000/- (50,000 + 50,000)	2,00,000/-	enhanced
4.	Medical expenses	13,04,000/-	13,04,000/-	confirmed
5.	Extra Nutrition	10,000/-	10,000/-	confirmed
6.	Attendant	1,20,000/-	2,00,000/-	enhanced
7.	Ambulance	10,000/-	10,000/-	confirmed
8.	Future medical expenses	.....	5,00,000/-	Awarded
	Total	2,00,04,000/-	3,09,84,000/-	Enhanced by 1,09,80,000/-

19.In the result, C.M.A(MD)No.908 of 2017 filed by the Insurance Company is dismissed and Cros.Obj(MD)No.10 of 2021 filed by the claimant is partly allowed.

(i) The Award of the Tribunal is enhanced to Rs.3,09,84,000/- from Rs.2,00,04,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The Insurance Company is directed to deposit the enhanced award amount together with accrued interest and costs to the credit of claim petition, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order.

(v) The claimant is permitted to withdraw the award amount with proportionate accrued interest and costs, less the award amount withdrawn, if any.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal/
(Special Court for EC and NDPS Act Cases),
Pudukkottai.

2.The V.R Section (Records),
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-13835[F] dated 26/03/2021)

+1 CC to M/s.R.SRINIVASAN, Advocate (SR-13821[F] dated 26/03/2021)

+1 CC to M/s.C.SUSI KUMAR, Advocate (SR-13744[F] dated 25/03/2021)

C.M.A(MD)No.908 of 2017
and
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